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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James J. ROSS et al.
Title: POWERED APPLIANCE AND ACCESSORY
Appl. No.: 10/645,421
Filing Date: 08/21/2003
Examiner: Kovacs, Arpad
Art Unit: 3671

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EV 459 167 151	05/06/2005
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Catherine A. Cusick	
(Printed Name)	
	
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TRANSMITTAL

Mail Stop **APPEAL BRIEF - PATENTS**
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Transmitted herewith are the following documents for the above-identified application.

- ☒ Brief On Appeal (37 pages).
- ☒ Check for \$250.00 for filing of Brief on Appeal.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, § 41.20 or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address

Respectfully submitted,

Date 5/6/05

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: James J. ROSS et al.
Filing Date: 08/21/03
For: POWERED APPLIANCE
AND ACCESSORY

Group Art Unit: 3671
Docket No.: 082454-0102
Application No.: 10/645,421
Examiner: Kovács, Árpád

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(Signature)	

BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. REAL PARTY IN INTEREST

The real party in interest is Meteor, LLC, a limited liability company established under the laws of the State of Wisconsin and having a principal place of business at 4019 Goodwin Road, Manitowoc, WI 54220, U.S.A. (hereinafter "Meteor").

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences that will directly affect, be directly affected by, or have a bearing on the present appeal, that are known to Appellant or Appellant's patent representative.

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III. STATUS OF CLAIMS

The present appeal is directed to Claims 1-51, i.e., all of the presently pending claims that stand rejected in this application. No claims have been allowed.

IV. STATUS OF AMENDMENTS

Claims 1-48 were originally pending in the application. In response to a first substantive Office Action mailed on September 28, 2004, and an Interview conducted October 19, 2004, Appellant amended Claims 1-3, 17, 23-25, 27, 32, 36, 38-40, and 46 and added Claims 49-51. This is an appeal from the Final Office Action mailed on December 7, 2004 finally rejecting Claims 1-51. No claims have been allowed.

V. SUMMARY OF THE INVENTION

The present invention relates generally to systems and methods for making the operation of powered appliances having a handle and a control, such as a non-riding powered lawnmower or a snowblower, more comfortable. With many powered appliances, the operator is required to move the control adjacent to the handle of the powered appliance in order to initiate the operation of the powered appliance. (Specification, page 1, paragraph 0002). When the control is moved adjacent the handle, the handle and the control form an awkward, uneven surface which is difficult and uncomfortable to grasp. (Specification, page 2, paragraph 0004). The vibration of the powered appliance not only exacerbates this discomfort but also frequently results in the operator's hands becoming pinched between the handle and the control. (Specification, page 2, paragraph 0004).

Claims 1-16 and 49-50 are directed to a powered appliance 10 including a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. One of the handle 22, 222 and the control 24, 224 includes a flexible material adjacent to the other of the handle 22, 222 and the control 24, 224. The flexible material is configured to deform under the normal amount of force the operator of the powered appliance 10 could continuously apply to the flexible material during the period of time the powered appliance 10 would normally be used during one session.

Claims 17-22 and 51 are directed to an accessory 20, 520 for use with a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The accessory 20, 520 includes a body that is configured to be coupled to one of the handle 22, 222 and control 24, 224 and to at least partially receive the other of the handle 22, 222 and the control 24, 224 when the control 24, 224 is in the first position. The body includes a flexible portion adjacent the other of the handle 22, 222 and control 24, 224. The flexible portion is configured to deform under the normal amount of force the operator could continuously apply to the flexible portion during the period of time the accessory would normally be used during one session.

Claim 23 is directed to a powered appliance 10 including a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. One of the handle 22, 222 and the control 24, 224 includes a compressible material adjacent to the other of the handle 22, 222 and the control 24, 224. The compressible material is configured to compress so as to occupy a reduced volume under the normal amount of force the operator of the powered appliance 10 could continuously apply to the compressible material during the period of time the powered appliance 10 would normally be used during one session.

Claim 24 is directed to an accessory 20, 120, 220, 320, 420, 520 for use with a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The accessory includes a body that is configured to be coupled to one of the handle 22, 222 and control 24, 224 and to at least partially receive the other of the handle 22, 222 and the control 24, 224 when the control 24, 224 is in the first position. The body includes a compressible portion adjacent the other of the handle 22, 222 and control 24, 224. The compressible portion is configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible portion during the period of time the accessory would normally be used during one session.

Claims 25-31 are directed to a method for equipping and operating a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19,

and a control 24, 224 movable between a first position and a second position. The method comprises the step of providing a tube 225 having a compressible outer surface 226, an inner cavity 228, and an opening 230 communicating with the inner cavity 228. The compressible outer surface 226 is configured to compress so as to occupy a reduced volume under the normal amount of force an operator of the powered appliance 10 could continuously apply to the compressible outer surface 226 during the period of time the powered appliance 10 would normally be used during one session. The method also comprises the steps of inserting one of the handle 22, 222 and the control 24, 224 through the opening 230 into the inner cavity 228 of the tube 225 and moving the control 24, 224 to the first position adjacent the tube 225 such that at least a portion of the control 24, 224 is surrounded by the outer surface 226 of the tube 225.

Claims 32-35 are directed to a method for equipping and operating a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The method comprises the step of providing a flexible member configured to deform under the normal amount of force an operator of the powered appliance 10 could continuously apply to the flexible member during the period of time the powered appliance 10 would normally be used during one session. The method also comprises the steps of moving the control 24, 224 to the first position and wrapping the flexible member at least partially about both the handle 22, 222 and the control 24, 224.

Claims 36-44 are directed to a method for equipping and operating a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The method comprises the step of providing a flexible member (sheet 525) having a first end and a second opposite end, the flexible member being configured to deform under the normal amount of force an operator of the powered appliance 10 could continuously apply to the flexible member during the period of time the powered appliance 10 would normally be used during one session. The method also comprises the steps of wrapping the flexible member about one of the handle 22, 222 and the control 24, 224, securing the first and second ends of the flexible member relative to one another about said one of the handle 22, 222 and the control 24, 224, and moving the control

24, 224 to the first position adjacent the flexible member such that at least a portion of the control 24, 224 is surrounded by the flexible member.

Claim 45 is directed to an accessory 20, 120, 220, 320, 420, 520 for use with a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The accessory includes a body that is configured to be coupled to one of the handle 22, 222 and control 24, 224 and to at least partially receive the other of the handle 22, 222 and the control 24, 224 when the control 24, 224 is in the first position. The body includes a compressible outer surface 226 and a high friction inner surface 232 configured to prevent movement of the body relative to the one of the handle 22, 222 and the control 24, 224 when the body is coupled to the one of the handle 22, 222 and the control 24, 224. (Specification, page 11, line 20 – page 12, line 26).

Claim 46 is directed to an accessory 320, 420, 520 for use with a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The accessory includes a body that is configured to be coupled to one of the handle 22, 222 and the control 24, 224 and to at least partially receive the other of the handle 22, 222 and the control 24, 224 when the control 24, 224 is in the first position. The body includes a first end 238 and a second opposite end 240. The body is dimensioned such that the first and second ends 238, 240 are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle 22, 222 and the control 24, 224. (Specification, page 14, lines 20-27). The body and the gap are sized so that at least half of the other of the handle 22, 222 and the control 24, 224 is received within the gap when the control 24, 224 is in the first position.

Claims 47-48 are directed to an accessory 420, 520 for use with a powered appliance 10 having a working member 19, a handle 22, 222 coupled to the working member 19, and a control 24, 224 movable between a first position and a second position. The accessory includes a body that is configured to be coupled to one of the handle 22, 222 and control 24, 224 and to at least partially receive the other of the handle 22, 222 and the control 24, 224 when the control 24, 224 is in the first position. The body includes a first end 238 and a second opposite

end 240. The accessory also includes a means for securing the first and second ends of the body relative to one another (retainer 444) about said one of the handle 22, 222 and the control 24, 224 in at least one direction. (Specification, page 15, line 7 – page 16, line 12, and page 16, line 22 – page 17, line 3).

VI. CONCISE STATEMENT LISTING EACH GROUND OF REJECTION FOR REVIEW

The issue on appeal is whether the Examiner erred in rejecting Claims 1-51 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. Des. 295,865 (Rosenblad) and U.S. Patent No. 4,362,228 (Plamper et al.) in view of U.S. Patent No. 4,810,009 (Legris).

VII. ARGUMENT

A. Legal Standards Under 35 U.S.C. § 103(a).

Claims 1-51 have been rejected under 35 U.S.C. § 103(a), which states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The legal standards under 35 U.S.C. § 103(a) are well-settled. Obviousness under 35 U.S.C. § 103(a) involves four factual inquiries: 1) the scope and content of the prior art; 2) the differences between the claims and the prior art; 3) the level of ordinary skill in the pertinent art; and 4) secondary considerations, if any, of nonobviousness. See Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966).

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. In re Piasecki, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). “[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” In re Fritch, 972 F.2d 1260, 1265, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). “[I]n order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned.” In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

As noted by the Federal Circuit, the “factual inquiry whether to combine references must be thorough and searching.” McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 60 U.S.P.Q. 2d 1001 (Fed. Cir. 2001). Further, it “must be based on objective evidence of record.” In re Lee, 277 F.3d 1338, 61 U.S.P.Q. 2d 1430 (Fed. Cir. 2002). The teaching or suggestion to make the claimed combination must be found in the prior art, and not in the applicant’s disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991). “It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to ‘[use] that which the inventor taught against its teacher.’” Lee (citing W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983)). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 U.S.P.Q. 2d 1430 (Fed. Cir. 1990). Moreover, the mere fact that modifications of the prior art to meet the claimed invention are within the capabilities of one of ordinary skill in the art is not sufficient, by itself, to establish *prima facie* obviousness. See In re Kotzab, 217 F.3d 1365, 1371 (Fed. Cir. 2000); Al-Site Corp. v. VSI Int’l Inc., 174 F.3d 1308 (Fed. Cir. 1999). Teaching away from the claimed invention is a strong indication of non-obviousness and an improper combination of references. U.S. v. Adams, 383 U.S. 39 (1966).

B. The rejection of Claims 1-16, 17-22, 32-35, and 49-51 under 35 U.S.C. § 103(a) as being unpatentable over Rosenblad and Plamper et al. in view of Legrís should be reversed because the claimed invention is not obvious over Rosenblad and Plamper et al. in view of Legrís.

Appellant respectfully requests that the rejection of Claims 1-16, 17-22, 32-35, and 49-51 based upon Rosenblad and Plamper et al. in view of Legrís be reversed because: (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, discloses, teaches, or suggests each element of each of the claims; (2) neither Rosenblad, Plamper et al. nor Legrís provides any suggestion or motivation to combine the handle and control of Rosenblad or Plamper et al. with the connection device of Legrís; and (3) Legrís is non-analogous art.

1. Claims 1-16, 17-22, 32-35, and 49-51 are patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, either alone or in any proper combination, discloses a flexible material, flexible portion, or flexible member that is configured to deform under the normal amount of force the operator could continuously apply to the flexible material, portion, or member during the period of time the powered appliance would normally be used during one session.

The claimed invention is not obvious under 35 U.S.C. § 103 unless the prior art reference or references teach or suggest all of the claim limitations. In re Royka, 490 Fed. 2d 981 (CCPA 1994). Accordingly, the rejection of Claims 1-16, 17-22, 32-35, and 49-51 under 35 U.S.C. § 103(a) is improper and should be reversed.

Claim 1 recites that “at least one of the handle and the control includes a flexible material adjacent the other of the handle and the control, the flexible material being configured to deform under the normal amount of force the operator could continuously apply to the flexible material during the period of time the powered appliance would normally be used during one session.” Claim 17 recites that “the body includes a flexible portion adjacent the other of the handle and the control, the flexible portion being configured to deform under the normal amount of force the operator could continuously apply to the flexible portion during the period of time

the accessory would normally be used during one session.” Claim 32 recites the step of “providing a flexible member configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session.”

Neither Rosenblad, Plamper et al., nor Legris, alone or in any proper combination, discloses, teaches or suggests a flexible material (Claims 1-16 and 49-50), a flexible portion (Claims 17-22 and 51), or a flexible member (Claims 32-35) configured to deform under the normal amount of force the operator could continuously apply to the flexible material, portion, or member during the period of time the powered appliance or accessory would normally be used during one session. In rejecting each of the claims of the Application, the Examiner stated:

Although in the interest of making matters more obvious, Examiner chose Plamper & Rosenblad as teaching the basic structure, including various designs for the control bar. The prior art is modified by utilizing a well known split pipe, placed (attached) either to the handle or to the control bar. Such resilient split pipe have been well known, the Examiner takes Official Notice, however to eliminate the need in the future to provide evidence of a resilient split pipe, the Examiner further provides Legris as one example of a teaching that a split resilient ring holding a pipe (or in case of the combination, either the handle or the control bar) is well known (col. 1, ln 33-34) in order to make the connection instantaneous.

Examiner is aware based on the earlier interview with the applicant, that a more detailed rejection is preferred; however, the Examiner in view of the simplicity of the invention, does not feel that it is necessary to recopy or to paraphrase all of the claims.

Finally, as shown in the prior art cited, a handle bar or control bar keeper in various forms, shapes designs, and material designs have

been known. Therefore, utilizing an already known "split resilient pipe" is nothing new.

The method & the functional language as recited in the apparatus & method claims of inserting/removing to either the handle or to the control bar is obvious, since the resilient pipe fitted/attached in this manner.

See Final Office Action, pp. 3-4. By stating that Plamper et al. and Rosenblad teach "the basic structure," the Office Action appears to acknowledge that neither Plamper et al. nor Rosenblad discloses such a flexible material, portion, or member. Instead, the Office Action appears to rely on Legrís to provide such a teaching. However, Legrís does not disclose, teach, or suggest a flexible material, portion, or member as recited in the claims. The portion of Legrís cited by the Examiner merely refers to a "split resilient ring." Neither the cited portion of Legrís, nor any other portion of Legrís, discloses, teaches, or suggests that the "split resilient ring" is configured deform under a certain amount of force applied by the operator, as is recited in the claims.

In order to maintain the rejection under 35 U.S.C. § 103(a), the differences between the subject matter sought to be patented and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. See 35 U.S.C. § 103(a) (emphasis added). Accordingly, it is impermissible for an Examiner to distill the claimed invention down to a "gist" or "thrust" of the invention and then base the rejection on the distilled version of the claim. "Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole.'" M.P.E.P. § 2141.02. See also W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983).

On page 2 of the Office Action, the Examiner stated that he grouped the claims as follows:

Group I: using a flexible pipe to deform resiliently under pressure to accommodate the control bar (24, 224), figs 4-7;

Group II: using again a flexible pipe to deform resiliently under pressure to accommodate the handle bar; which is in essence reversal of the place the flexible split pipe is attached; although some of the claims directed toward the size of the channel, gap, or opening, however, this feature is well within the skill to one having ordinary skill in the art to make the split type having varying gap size. (Also see in re the location of parts: *In re Japikse*, 86 USPQ 70)

Final Office Action, pg. 2 (emphasis added). It is unclear why the Examiner grouped each of the 51 claims into one of two groups rather than analyzing each claim according to its own merits. Nevertheless, in grouping the claims as he did, the Examiner clearly distilled each of the claims down to what he perceived to be the gist or thrust of the claim, and then grouped together those claims that he thought had the same gist or thrust. Then, rather than analyzing the particular subject matter of each individual claim as a whole, the Examiner appears to have analyzed what he believed to be the gist or thrust of the two groups of claims. By analyzing the gist or thrust of the claims, the Office Action ignored the true limitations of Claims 1-16, 17-22, 32-35, and 49-51 and failed to analyze each claim "as a whole," which is improper. For example, independent Claims 1, 17, and 32 each recite a flexible material (Claim 1), flexible portion (Claim 17), or flexible member (Claim 32) that is "configured to deform under the normal amount of force the operator could continuously apply to the flexible [material, portion, or member] during the period of time the powered appliance [or accessory] would normally be used during one session." The Office Action appears to have distilled this limitation down to "a flexible pipe to deform resiliently under pressure to accommodate the control bar." By analyzing the thrust or gist of each of the claims in this manner, the Examiner completely ignored the limitation in the claims relating to the amount of force needed to deform the flexible material, portion, or member and has failed to identify any prior art that teaches such limitation.

For the reasons stated above, the rejection of Claims 1, 17, and 32 based on Plamper et al. and Rosenblad in view of Legriss is improper and should be reversed. Claims 2-16 and 49-50, Claims 18-22 and 51, and Claims 33-35 depend from independent Claims 1, 17, and 32, respectively.

Accordingly, the rejection of Claims 2-16, 49-50, 18-22, 51, and 33-35 is also improper and should be reversed for the same reasons.

2. Claims 1-16, 17-22, 32-35, and 49-51 are patentable over Rosenblad and Plamper et al. in view of Legris because neither Rosenblad, Plamper et al., nor Legris, provides any suggestion or motivation to modify the handles and controls disclosed in Rosenblad and Plamper et al. with the coupling device disclosed in Legris.

Even if the cited prior art disclosed each limitation of the claims (which it does not), the cited prior art does not provide any suggestion or motivation to combine the so-called “basic structure” disclosed in Plamper et al. and Rosenblad with the so-called “resilient split pipe” disclosed in Legris. The Examiner states that Plamper et al. and Rosenblad teach the “basic structure,” including various designs for the control bar, but implicitly acknowledges that Plamper et al. and Rosenblad do not teach the “flexible material” (Claims 1-16 and 45-50), the “flexible portion” (Claims 17-22 and 51), or the “flexible member” (Claims 32-35) by recognizing that the so-called “basic structure” of Plamper et al. or Rosenblad needs to be modified. To fulfill the acknowledged inadequacies of Plamper et al. and Rosenblad, the Examiner refers to a so-called “well known split pipe” that is placed or attached either to the handle or to the control bar. The Examiner cites column 1, lines 33-34 of Legris “as one example of a teaching that a split resilient ring holding a pipe . . . is well known.”

Neither Plamper et al., Rosenblad, nor Legris provides any suggestion or motivation to modify the handle or control (i.e., the “basic structure”) of Plamper et al. or Rosenblad based upon the instantaneous connection device (or so-called “split pipe”) taught by the cited portions of Legris. The portion of Legris cited by the Examiner (as well as some of the surrounding text) states:

The present invention relates more particularly to pipes made from plastic material, for example from cross-linked polyethylene, used for the distribution of sanitary cold and hot water as well as for that of central heating in the building field. The instantaneous

connections for said application are not very numerous. *There exist connections in which the piece holding the pipe is a split resilient ring obtained sometimes by cutting, rolling or stamping engaging the tube while being gripped inside a circular inner envelope of the connection body or sliding freely in this envelope. However, although this type of connection for the application more particularly considered above allows the tube to be fitted instantaneously, removal thereof is not instantaneous.*

Legrís, col. 1, lines 26-41 (emphasis added). As is clear from the passage cited above, the portion of Legrís cited by the Examiner discloses an instantaneous connection device for joining pipes together end-for-end to permit the transportation of a compressed fluid through the pipes. Neither Plamper et al., Rosenblad, nor Legrís provide any teaching, suggestion, or motivation that would lead one of skill in the art to modify the handle and control bar disclosed in Plamper et al. or Rosenblad by somehow incorporating the split resilient ring of Legrís, which is part of a device for instantaneously coupling together two pipes end-for-end. The Office Action also fails to point to any such teaching, suggestion, or motivation. Rather, the Office Action appears to imply that because the "split resilient ring" of Legrís is used in connection with pipes, there is a motivation or suggestion to use the split resilient ring in any manner, with any kind of pipes, and in any situation. Quite to the contrary, nothing in Legrís, Plamper et al., or Rosenblad provides a motivation or suggestion to use the "split resilient ring" in connection with the handle and control bar of a powered appliance in an entirely different way than the "split resilient ring" is taught to be used in Legrís. The only teaching, suggestion, or motivation for providing a "flexible material" (Claims 1-16 and 45-50), a "flexible portion" (Claims 17-22 and 51), or a "flexible member" (Claims 32-35) for use in connection with the handle and control of a powered appliance is provided in Appellant's own disclosure, which cannot properly be the source for such teaching, suggestion, or motivation.

Further supporting the fact that there is no motivation or suggestion to combine the cited references is the fact that any attempt to combine the teachings of Plamper et al. or Rosenblad with the teachings of Legrís would render the device taught by Legrís unsatisfactory for its intended purpose and would change its principal of operation. It is well settled law that a

proposed modification under 35 U.S.C. § 103(a) cannot change the principal of operation of the prior art or render the prior art unsatisfactory for its intended purpose. See M.P.E.P 2143.01, “THE PROPOSED MODIFICATION CANNOT CHANGE THE PRINCIPAL OPERATION OF A REFERENCE” and “THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE.” The “split resilient ring” of Legris is intended to be used with, or gripped within, “a circular inner envelope of the connection body” in order to couple an end of a first pipe to an end of a second pipe in a manner that allows for the transport of material (such as water) through the pipes. Legris, Col. 1, Lines 26-37. To modify the “split resilient ring” of Legris so that it worked in conjunction with the handle and control bar of Plamper et al. or Rosenblad, where the handle and control are generally side-by-side rather than end-for-end, would require a complete restructuring of the “split resilient ring.” This is because the split resilient ring disclosed in Legris is configured to be used to couple pipes end-for-end rather than side-by-side. Any such modification of the split resilient ring clearly would change its principal of operation and render it unsatisfactory for its intended purpose. Because the proposed modification of the device taught by Legris would render the device unsatisfactory for its intended purpose and would change its principal of operation combination, there is no suggestion or motivation to combine the references.

Because there is no suggestion or motivation to combine the cited references, Appellant respectfully requests that the rejection of Claims 1-16, 17-22, 32-35, and 49-51 be withdrawn.

3. Claims 1-16, 17-22, 32-35, and 49-51 are patentable over Rosenblad and Plamper et al. in view of Legris because Legris is nonanalogous art that was improperly relied upon as a basis for rejecting the claims.

To rely on a reference under 35 U.S.C. § 103(a), it must be analogous art. See M.P.E.P 2141.01(a). In particular, “in order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned.” In re Oetiker, 977 F.2d 1443, 1446 (Fed. Cir. 1992). In the present case, Claims 1, 17, and 32 each relate to a powered appliance, an accessory for use with a powered appliance, or a method

for equipping and operating a powered appliance. While Plamper et al. and Rosenblad relate to a powered appliance, Legrís relates to a completely different field of endeavor, a device for coupling and sealing together the ends of two tubes so a pressurized fluid may be transferred through the tubes. The field of a powered appliance, an accessory for use with a powered appliance, or a method for equipping and operating a powered appliance is clearly distinct from that of a coupler for tubes. Moreover, the problems being solved are also immensely different. The present invention relates to providing a more comfortable interface between the control bar and handle of a powered appliance. In contrast, Legrís relates to a device for coupling the ends of two tubes together so that the tubes may transport a pressurized or compressed fluid. A person of ordinary skill in the powered appliance art would not reasonably be expected or motivated to look to couplings for pipes. Because Legrís is not analogous prior art, Appellant respectfully submits that the rejection of independent Claims 1-16, 17-22, 32-35, and 49-51 based upon Plamper et al. and Rosenblad in view of Legrís is improper and should be withdrawn.

C. The rejection of Claims 23-31 under 35 U.S.C. § 103(a) as being unpatentable over Rosenblad and Plamper et al. in view of Legrís should be reversed because the claimed invention is not obvious over Rosenblad and Plamper et al. in view of Legrís.

Appellant respectfully requests that the rejection of Claims 23-31 based upon Rosenblad and Plamper et al. in view of Legrís be reversed because: (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, discloses, teaches, or suggests each element of each of the claims; (2) neither Rosenblad, Plamper et al. nor Legrís provides any suggestion or motivation for combining the handle and control of Rosenblad or Plamper et al. with the connection device of Legrís; and (3) Legrís is non-analogous art.

1. Claims 23-31 are patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, either alone or in any proper combination, discloses a compressible material, compressible portion, or compressible outer surface that is configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to compressible material, compressible portion, or compressible outer surface during

the period of time the powered appliance would normally be used during one session.

Claim 23 recites that “at least one of the handle and the control includes a compressible material adjacent the other of the handle and the control, the compressible material being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible material during the period of time the powered appliance would normally be used during one session.” Claim 24 recites that “the body includes a compressible portion adjacent the other of the handle and the control, the compressible portion being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible portion during the period of time the accessory would normally be used during one session.” Claim 25 recites the step of “providing a tube having a compressible outer surface . . . , the compressible outer surface being configured to compress so as to occupy a reduced volume under the normal amount of force an operator of the powered appliance could continuously apply to the compressible outer surface during the period of time the powered appliance would normally be used during one session.”

Neither Rosenblad, Plamper et al., nor Legrís, alone or in any proper combination, discloses, teaches or suggests a "compressible material" (Claim 23), a "compressible portion" (Claim 24), or a "compressible outer surface" (Claims 25-31) configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible material, compressible portion, or compressible outer surface during the period of time the powered appliance or accessory would normally be used during one session. By stating that Plamper et al. and Rosenblad teach “the basic structure,” the Office Action appears to acknowledge that neither Plamper et al. nor Rosenblad discloses such a compressible material, portion, or member. Instead, the Office Action appears to rely on Legrís to provide such a teaching. However, Legrís does not disclose, teach, or suggest a compressible material, portion, or member as recited in the claims. The portion of Legrís cited by the Examiner merely refers to a "split resilient ring." Neither the cited portion of Legrís, nor any other portion of Legrís, discloses, teaches, or suggests that the "split resilient ring" is configured

to compress so as to occupy a reduced volume upon the application of a certain amount of force provided by a user of the split resilient ring, as is recited in the claims.

As discussed above in Section VII.B.1. it is impermissible to distill the claimed invention down to a "gist" or "thrust" of the invention and then base the rejection on the distilled version of the claim. By grouping all of the claims into one of two groups, the Examiner did just that. In doing so, the Office Action ignored the true limitations of Claims 23-31 and failed to analyze each claim "as a whole," which is improper. For example, independent Claims 23, 24, and 25 each recite a compressible material (Claim 23), compressible portion (Claim 24), or compressible outer surface (Claim 25) that is configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible material, portion, or outer surface during the period of time the powered appliance or accessory would normally be used during one session. The Office Action completely ignored these limitations by distilling the claimed invention down to "a flexible pipe to deform resiliently under pressure to accommodate the control bar" and has failed to identify any prior art that teaches such limitations.

For the reasons stated above, the rejection of Claims 23, 24, and 25 based on Plamper et al. and Rosenblad in view of Legris is improper and should be reversed. Claims 26-31 depend from independent Claim 25. Accordingly, the rejection of Claims 26-31 is also improper and should be reversed for the same reasons.

2. Claims 23-31 are patentable over Rosenblad and Plamper et al. in view of Legris because neither Rosenblad, Plamper et al., nor Legris, provide any suggestion or motivation to modify the handles and controls disclosed in Rosenblad and Plamper et al. with the coupling device disclosed in Legris.

Even if Rosenblad, Plamper et al., and Legris disclosed each element of each claims (which they do not), none of these references, either alone or in any combination, provide any suggestion or motivation to combine the so-called "basic structure" disclosed in Plamper et al. and Rosenblad with the so-called "resilient split pipe" disclosed in Legris. As discussed above in Section VII.B.2., the references themselves do not provide any teaching, suggestion, or

motivation that would lead one of skill in the art to modify the handle and control bar disclosed in Plamper et al. or Rosenblad by somehow incorporating the split resilient ring of Legrís, and the Office Action fails to point to any such teaching, suggestion, or motivation. Any suggestion or motivation to combine the references was taken from Appellant's own disclosure, which is improper. Moreover, any attempt to combine the teachings of Plamper et al. or Rosenblad with the teachings of Legrís would render the device taught by Legrís unsatisfactory for its intended purpose and would change its principal of operation.

For the reasons stated above, the rejection of Claims 23-31 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed.

3. Claims 23-31 are patentable over Rosenblad and Plamper et al. in view of Legrís because Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims.

For the same reasons set forth above in Section VII.B.3., Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims. Because Legrís is not analogous prior art, Appellate respectfully submits that the rejection of Claims 23-31 based upon Plamper et al. and Rosenblad in view of Legrís is improper and should be withdrawn.

D. The rejection of Claims 36-44 and 47-48 under 35 U.S.C. § 103(a) as being unpatentable over Rosenblad and Plamper et al. in view of Legrís should be reversed because the claimed invention is not obvious over Rosenblad and Plamper et al. in view of Legrís.

Appellant respectfully requests that the rejection of Claims 36-44 and 47-48 based upon Rosenblad and Plamper et al. in view of Legrís be reversed because: (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, discloses, teaches, or suggests each element of each of the claims; (2) neither Rosenblad, Plamper et al. nor Legrís provides any suggestion or motivation for combining the handle and control of Rosenblad or Plamper et al. with the connection device of Legrís; and (3) Legrís is non-analogous art.

1. Claims 36-44 and 47-48 are patentable over Rosenblad and Plamper et al. in view of Legris because neither Rosenblad, Plamper et al., nor Legris, either alone or in any proper combination, discloses securing the first and second ends of a body relative to one another about one of the handle and the control.

Claim 36 recites "a method for equipping and operating a powered appliance including a working member, a handle . . . , and a control" comprising "providing a flexible member having a first end and a second opposite end" and "securing the first and second ends relative to one another about said one of the handle and the control." Claim 47 recites "an accessory for use with a powered appliance having a working member, a handle . . . , and a control" comprising "a body configured to be coupled to one of the handle and the control, . . . wherein the body includes a first end and a second opposite end and wherein the accessory further includes means for securing the first and second ends relative to one another about said one of the handle and the control."

Neither Rosenblad, Plamper et al., nor Legris, alone or in any proper combination, discloses, teaches or suggests securing the first and second ends of a flexible member (Claim 36) or a body (Claim 47) relative to one another about one of the handle and the control. By stating that Plamper et al. and Rosenblad teach "the basic structure," the Office Action appears to acknowledge that neither Plamper et al. nor Rosenblad discloses the step of securing, or the means for securing, the first and second ends of the flexible portion or body. Instead, the Office Action appears to rely on Legris to provide such a teaching. However, Legris does not disclose, teach, or suggest the step of securing, or a means for securing, the first and second ends of the flexible material or body relative to one another about one of the handle or the control. The portion of Legris cited by the Examiner merely refers to a "split resilient ring" that engages the tube "while being gripped inside a circular inner envelope of the connection body or sliding freely in this envelope." Col. 1, lines 32-37. Neither the cited portion of Legris, nor any other portion of Legris, discloses, teaches, or suggests that the "split resilient ring" has first and second ends that are secured relative to one another.

As discussed above in Section VII.B.1., it is impermissible to distill the claimed invention down to a "gist" or "thrust" of the invention and then base the rejection on the distilled

version of the claim. By grouping all of the claims into one of two groups, the Examiner did just that. In doing so, the Office Action ignored the true limitations of Claims 36-44 and 47-48 and failed to analyze each claim "as a whole," which is improper. For example, independent Claim 36 recites a method for equipping and operating a powered appliance including the step of "providing a flexible member having a first end and a second opposite end, the flexible member being configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session" and the step of "securing the first and second ends relative to one another about said one of the handle and the control." Similarly, Claim 47 recites an accessory for use with a powered appliance comprising a body having a first end and a second opposite end and a "means for securing the first and second ends relative to one another about said one of the handle and the control in at least one direction." The Office Action completely ignored these limitations by distilling the claimed invention down to "a flexible pipe to deform resiliently under pressure to accommodate the control bar" and has failed to identify any prior art that teaches such limitations.

In addition to the reasons stated above, the rejection of Claims 36 should also be reversed for the same reasons discussed above in Section VII.B. Claim 36 recites "a method for equipping and operating a powered appliance including a working member, a handle . . . , and a control" comprising "providing a flexible member . . . , the flexible member being configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session." As discussed in Section VII.B. in connection with Claims 1-16, 17-22, 32-35, and 49-51, (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, disclose, teach, or suggest such a flexible member; (2) neither Rosenblad, Plamper et al. nor Legrís provide any suggestion or motivation for somehow combining the connection device of Legrís with the handle and control of Rosenblad or Plamper et al.; and (3) Legrís is non-analogous art.

For the reasons stated above, the rejection of Claims 36 and 48 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed. Claims 37-44 and

Claim 48 depend from independent Claims 36 and 47, respectively. Accordingly, the rejection of Claims 37-44, and 48 is also improper and should be reversed for the same reasons.

2. Claims 36-44 and 47-48 are patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, provide any suggestion or motivation to modify the handles and controls disclosed in Rosenblad and Plamper et al. with the coupling device disclosed in Legrís.

Even if Rosenblad, Plamper et al., and Legrís disclosed each element of each claim (which they do not), none of these references, either alone or in any combination, provide any suggestion or motivation to combine the so-called “basic structure” disclosed in Plamper et al. and Rosenblad with the so-called “resilient split pipe” disclosed in Legrís. As discussed above in Section VII.B.2., the references themselves do not provide any teaching, suggestion, or motivation that would lead one of skill in the art to modify the handle and control bar disclosed in Plamper et al. or Rosenblad by somehow incorporating the split resilient ring of Legrís, and the Office Action fails to point to any such teaching, suggestion, or motivation. Any suggestion or motivation to combine the references was taken from Appellant’s own disclosure, which is improper. Moreover, any attempt to combine the teachings of Plamper et al. or Rosenblad with the teachings of Legrís would render the device taught by Legrís unsatisfactory for its intended purpose and would change its principal of operation.

For the reasons stated above, the rejection of Claims 36-44 and 47-48 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed.

3. Claims 36-44 and 47-48 are patentable over Rosenblad and Plamper et al. in view of Legrís because Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims.

For the same reasons set forth above in Section VII.B.3., Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims. Because Legrís is not analogous prior art, Appellate respectfully submits that the rejection of Claims 36-44 and 47-48 based upon Plamper et al. and Rosenblad in view of Legrís is improper and should be withdrawn.

E. The rejection of Claim 45 under 35 U.S.C. § 103(a) as being unpatentable over Rosenblad and Plamper et al. in view of Legrís should be reversed because the claimed invention is not obvious over Rosenblad and Plamper et al. in view of Legrís.

Appellant respectfully requests that the rejection of Claim 45 based upon Rosenblad and Plamper et al. in view of Legrís be reversed because: (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, discloses, teaches, or suggests each element of each of the claim; (2) neither Rosenblad, Plamper et al. nor Legrís provides any suggestion or motivation for combining the handle and control of Rosenblad or Plamper et al. with the connection device of Legrís; and (3) Legrís is non-analogous art.

1. Claim 45 is patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, either alone or in any proper combination, discloses a body having a compressible outer surface and a high friction inner surface.

Claim 45 recites "an accessory for use with a powered appliance having a working member, a handle . . . , and a control," the accessory comprising "a body configured to be coupled to one of the handle and the control, . . . wherein the body has a compressible outer surface and a high friction inner surface configured to prevent movement of the body relative to said one of the handle and the control when the body is coupled to said one of the handle and the control."

Neither Rosenblad, Plamper et al., nor Legrís, alone or in any proper combination, discloses, teaches or suggests a body having a compressible outer surface, a body having a high friction inner surface, or a body having both a compressible outer surface and a high friction inner surface. By stating that Plamper et al. and Rosenblad teach "the basic structure," the Office Action appears to acknowledge that neither Plamper et al. nor Rosenblad discloses such a compressible outer surface and/or high friction inner surface. Instead, the Office Action appears to rely on Legrís to provide such a teaching. However, Legrís does not disclose, teach, or suggest a compressible outer surface and/or a high friction inner surface as recited in the claim. The portion of Legrís cited by the Examiner merely refers to a "split resilient ring" and provides

very little detail about the “split resilient ring.” Neither the cited portion of Legris, nor any other portion of Legris, discloses, teaches, or suggests that the “split resilient ring” has a compressible outer surface and/or a high friction inner surface as is recited in the claims.

As discussed above in Section VII.B.1., it is impermissible to distill the claimed invention down to a “gist” or “thrust” of the invention and then base the rejection on the distilled version of the claim. By grouping all of the claims into one of two groups, the Examiner did just that. In doing so, the Office Action ignored the true limitations of Claim 45 and failed to analyze the claim “as a whole,” which is improper. For example, Claim 45 recites, among other elements, “a body configured to be coupled to one of the handle and the control, . . . wherein the body has a compressible outer surface and a high friction inner surface configured to prevent movement of the body relative to said one of the handle and the control when the body is coupled to said one of the handle and the control.” The Office Action completely ignored these limitations by distilling the claimed invention down to “a flexible pipe to deform resiliently under pressure to accommodate the control bar” and has failed to identify any prior art that teaches such limitations.

For the reasons stated above, the rejection of Claim 45 based on Plamper et al. and Rosenblad in view of Legris is improper and should be reversed.

2. Claim 45 is patentable over Rosenblad and Plamper et al. in view of Legris because neither Rosenblad, Plamper et al., nor Legris, provides any suggestion or motivation to modify the handles and controls disclosed in Rosenblad and Plamper et al. with the coupling device disclosed in Legris.

Even if Rosenblad, Plamper et al., and Legris disclosed each element of each claims (which they do not), none of these references, either alone or in any combination, provide any suggestion or motivation to combine the so-called “basic structure” disclosed in Plamper et al. and Rosenblad with the so-called “resilient split pipe” disclosed in Legris. As discussed above in Section VII.B.2., the references themselves do not provide any teaching, suggestion, or motivation that would lead one of skill in the art to modify the handle and control bar disclosed in Plamper et al. or Rosenblad by somehow incorporating the split resilient ring of Legris, and

the Office Action fails to point to any such teaching, suggestion, or motivation. Any suggestion or motivation to combine the references was taken from Appellant's own disclosure, which is improper. Moreover, any attempt to combine the teachings of Plamper et al. or Rosenblad with the teachings of Legrís would render the device taught by Legrís unsatisfactory for its intended purpose and would change its principal of operation.

For the reasons stated above, the rejection of Claim 45 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed.

3. Claim 45 is patentable over Rosenblad and Plamper et al. in view of Legrís because Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims.

For the same reasons set forth above in Section VII.B.3., Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims. Because Legrís is not analogous prior art, Appellate respectfully submits that the rejection of Claim 45 based upon Plamper et al. and Rosenblad in view of Legrís is improper and should be withdrawn.

F. The rejection of Claim 46 under 35 U.S.C. § 103(a) as being unpatentable over Rosenblad and Plamper et al. in view of Legrís should be reversed because the claimed invention is not obvious over Rosenblad and Plamper et al. in view of Legrís.

Appellant respectfully requests that the rejection of Claim 46 based upon Rosenblad and Plamper et al. in view of Legrís be reversed because: (1) neither Rosenblad, Plamper et al. nor Legrís, alone or in any proper combination, discloses, teaches, or suggests each element of each of the claim; (2) neither Rosenblad, Plamper et al. nor Legrís provides any suggestion or motivation for combining the handle and control of Rosenblad or Plamper et al. with the connection device of Legrís; and (3) Legrís is non-analogous art.

1. Claim 46 is patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, either alone or in any proper

combination, discloses a body having a gap sized so that at least half of the handle or the control is received within the gap.

Claim 46 recites "an accessory for use with a powered appliance having a working member, a handle . . . , and a control," the accessory comprising "a body configured to be coupled to one of the handle and the control, . . . wherein the body has a first end and a second opposite end and wherein the body is dimensioned such that the first and second ends are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle and the control, wherein the body and the gap are sized so that at least half of the other of the handle and the control is received within the gap when the control is in the first position."

Neither Rosenblad, Plamper et al., nor Legrís, alone or in any proper combination, discloses, teaches or suggests an accessory having a body configured to be coupled to one of the handle and the control and forming a gap as recited in Claim 46. By stating that Plamper et al. and Rosenblad teach "the basic structure," the Office Action appears to acknowledge that neither Plamper et al. nor Rosenblad discloses such a body and gap. Instead, the Office Action appears to rely on Legrís to provide such a teaching. However, Legrís does not disclose, teach, or suggest a body configured to be coupled to one of the handle and the control and forming a gap where the body and the gap "are sized so that at least half of the other of the handle and the control is received within the gap when the control is in the first position." The portion of Legrís cited by the Examiner merely refers to a "split resilient ring." Neither the cited portion of Legrís, nor any other portion of Legrís, discloses, teaches, or suggests that the "split resilient ring" includes a gap sized to receive another member.

As discussed above in Section VII.B.1., it is impermissible to distill the claimed invention down to a "gist" or "thrust" of the invention and then base the rejection on the distilled version of the claim. By grouping all of the claims into one of two groups, the Examiner did just that. In doing so, the Office Action ignored the true limitations of Claim 46 and failed to analyze the claim "as a whole," which is improper. For example, Claim 46 recites "an accessory for use with a powered appliance having a working member, a handle . . . , and a control," the accessory comprising, among other elements, "a body configured to be coupled to one of the handle and

the control, . . . wherein the body has a first end and a second opposite end and wherein the body is dimensioned such that the first and second ends are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle and the control, wherein the body and the gap are sized so that at least half of the other of the handle and the control is received within the gap when the control is in the first position." The Office Action completely ignored these limitations by distilling the claimed invention down to "a flexible pipe to deform resiliently under pressure to accommodate the control bar" and has failed to identify any prior art that teaches such limitations.

For the reasons stated above, the rejection of Claim 46 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed.

2. Claim 46 is patentable over Rosenblad and Plamper et al. in view of Legrís because neither Rosenblad, Plamper et al., nor Legrís, provides any suggestion or motivation to modify the handles and controls disclosed in Rosenblad and Plamper et al. with the coupling device disclosed in Legrís.

Even if Rosenblad, Plamper et al., and Legrís disclosed each element of each claims (which they do not), none of these references, either alone or in any combination, provide any suggestion or motivation to combine the so-called "basic structure" disclosed in Plamper et al. and Rosenblad with the so-called "resilient split pipe" disclosed in Legrís. As discussed above in Section VII.B.2., the references themselves do not provide any teaching, suggestion, or motivation that would lead one of skill in the art to modify the handle and control bar disclosed in Plamper et al. or Rosenblad by somehow incorporating the split resilient ring of Legrís, and the Office Action fails to point to any such teaching, suggestion, or motivation. Any suggestion or motivation to combine the references was taken from Appellant's own disclosure, which is improper. Moreover, any attempt to combine the teachings of Plamper et al. or Rosenblad with the teachings of Legrís would render the device taught by Legrís unsatisfactory for its intended purpose and would change its principal of operation.

In the description of Group II, the Examiner stated that "although some of the claims directed toward the size of the channel, gap, or opening, however, this feature is well

within the skill of one having ordinary skill in the art to make the split pipe having varying size." See Final Office Action, pp. 2-3. There are at least two reasons why this statement is insufficient to establish a *prima facie* case of obviousness. First, the Examiner failed to provide any support for this conclusory statement, as the Examiner failed to identify even a single reference that teaches a body configured to be coupled to one of the handle and the control where the body has a gap sized to receive another member. Second, it is well established that the mere fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient to establish a *prima facie* case of obviousness. See *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308 (Fed. Cir. 1999); M.P.E.P. § 2143.01, "FACT THAT THE CLAIMED INVENTION IS WITHIN THE CAPABILITIES OF ONE OF ORDINARY SKILL IN THE ART IS NOT SUFFICIENT BY ITSELF TO ESTABLISH *PRIMA FACIE* OBVIOUSNESS." In order to establish a *prima facie* case of obviousness, there must be some objective reason to make the claimed combination. Whether a particular feature is within the capabilities of one having ordinary skill is an entirely different question than whether a claimed combination that includes that particular feature would have been obvious to one of ordinary skill in the art. Thus, even if providing a body with a gap of a certain size is within the ordinary skill in the art, the Examiner has failed to point to any objective reason that would lead one of ordinary skill in the art to make the claimed combination.

For the reasons stated above, the rejection of Claim 46 based on Plamper et al. and Rosenblad in view of Legrís is improper and should be reversed.

3. Claim 46 is patentable over Rosenblad and Plamper et al. in view of Legrís because Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims.

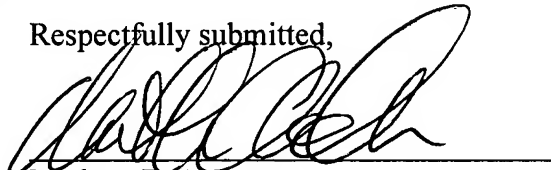
For the same reasons set forth above in Sections VII.B.3., Legrís is nonanalogous art that was improperly relied upon as a basis for rejecting the claims. Because Legrís is not analogous prior art, Appellant respectfully submits that the rejection of Claim 46 based upon Plamper et al. and Rosenblad in view of Legrís is improper and should be withdrawn.

VIII. SUMMARY

For the foregoing reasons, it is submitted that the Examiner's rejections are erroneous, and reversal of the implied rejections is respectfully requested.

Dated this 6th day of May, 2005.

Respectfully submitted,



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APPENDIX - THE CLAIMS ON APPEAL

1. (Previously Presented) A powered appliance for use by an operator, the powered appliance comprising:
 - a working member;
 - a handle coupled to the working member; and
 - a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, wherein one of the handle and the control is configured to at least partially receive the other of the handle and the control prior to compression of the handle or the control when in the first position and wherein at least one of the handle and the control includes a flexible material adjacent the other of the handle and the control, the flexible material being configured to deform under the normal amount of force the operator could continuously apply to the flexible material during the period of time the powered appliance would normally be used during one session.
2. (Previously Presented) The appliance of Claim 1, wherein one of the control and the handle includes an extension configured to at least partially wrap about the other of the control and the handle, wherein at least a portion of the extension includes the flexible material.
3. (Previously Presented) The appliance of Claim 2, wherein the control member includes the extension.
4. (Original) The appliance of Claim 2, wherein the extension includes an overlap portion spanning a junction of the handle and the control and wherein the overlap portion includes the flexible material.
5. (Original) The appliance of Claim 2, wherein an entirety of the extension is formed from the flexible material.
6. (Original) The appliance of Claim 1, wherein the flexible material is compressible.
7. (Original) The appliance of Claim 6, wherein the flexible material is a foam.

8. (Original) The appliance of Claim 6, wherein said one of the handle and the control forms a channel configured to receive the other of the handle and the control.

9. (Original) The appliance of Claim 1, wherein said one of the handle and control forms a channel configured to receive the other of the handle and the control.

10. (Original) The appliance of Claim 9, wherein the handle forms the channel.

11. (Original) The appliance of Claim 1, wherein the powered appliance comprises a lawnmower and wherein the working member comprises a blade.

12. (Original) The appliance of Claim 1, wherein the control pivots between the first position and the second position.

13. (Original) The appliance of Claim 1, wherein the control comprises a bale arm.

14. (Original) The appliance of Claim 1, wherein movement of the working member is cessated when the control is in the second position.

15. (Original) The appliance of Claim 1, wherein power to the working member is reduced when the control is in the second position.

16. (Original) The appliance of Claim 1, wherein the control member is biased towards the second position.

17. (Previously Presented) An accessory for use with a powered appliance for use by an operator, the powered appliance having a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, the accessory comprising:

a body configured to be coupled to one of the handle and the control, the body being configured to at least partially receive the other of the handle and the control when in the first position, wherein the body includes a flexible portion adjacent the other of the handle and the control, the flexible portion being configured to deform under the normal amount of force the

operator could continuously apply to the flexible portion during the period of time the accessory would normally be used during one session.

18. (Original) The accessory of Claim 17, wherein the body includes an extension configured to at least partially wrap about the other of the control and the handle, wherein at least a portion of the extension includes the flexible material.

19. (Original) The accessory of Claim 18, wherein the extension includes an overlap portion spanning a junction of the handle and the control and wherein the overlap portion includes the flexible material.

20. (Original) The accessory of Claim 18, wherein an entirety of the extension is formed from the flexible material.

21. (Original) The accessory of Claim 17, wherein the flexible material is compressible.

22. (Original) The accessory of Claim 21, wherein the flexible material is selected from a group including: foam, flocked foam, cloth, flexible polymers, woven and non-woven fabrics, and various combinations thereof.

23. (Previously Presented) A powered appliance for use by an operator, the powered appliance comprising:

a working member;

a handle coupled to the working member; and

a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, wherein one of the handle and the control is configured to at least partially receive the other of the handle and the control prior to compression of the handle or the control when in the first position and wherein at least one of the handle and the control includes a compressible material adjacent the other of the handle and the control, the compressible material being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the

compressible material during the period of time the powered appliance would normally be used during one session.

24. (Previously Presented) An accessory for use with a powered appliance for use by an operator, the powered appliance having a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, the accessory comprising:

a body configured to be coupled to one of the handle and the control, the body being configured to at least partially receive the other of the handle and the control when in the first position, wherein the body includes a compressible portion adjacent the other of the handle and the control, the compressible portion being configured to compress so as to occupy a reduced volume under the normal amount of force the operator could continuously apply to the compressible portion during the period of time the accessory would normally be used during one session.

25. (Previously Presented) A method for equipping and operating a powered appliance including a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant to the handle in which movement of the working member is at least reduced, the method comprising:

providing a tube having a compressible outer surface, an inner cavity, and an opening communicating with the inner cavity, the compressible outer surface being configured to compress so as to occupy a reduced volume under the normal amount of force an operator of the powered appliance could continuously apply to the compressible outer surface during the period of time the powered appliance would normally be used during one session;

inserting one of the handle and the control through the opening into the inner cavity; and

moving the control to the first position adjacent the tube such that at least a portion of the control is surrounded by the outer surface.

26. (Original) The method of Claim 25, wherein the operation of moving the control includes compressing the outer surface with the control such that at least a portion of the control is surrounded by the outer surface.

27. (Previously Presented) The method of Claim 25, further comprising positioning the control at least partially within the opening.

28. (Original) The method of Claim 25, wherein the opening comprises a longitudinal slit.

29. (Original) The method of Claim 25, wherein the outer surface extends at least 120 degrees about the control after the control has been moved to the first position.

30. (Original) The method of Claim 25, wherein the outer surface extends at least 180 degrees about the control after the control has been moved to the first position.

31. (Original) The method of Claim 25, wherein the outer surface extends at least 270 degrees about the control after the control has been moved to the first position.

32. (Previously Presented) A method for equipping and operating a powered appliance including a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant to the handle in which movement of the working member is at least reduced, the method comprising:

providing a flexible member configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session; moving the control to the first position; and wrapping the flexible member at least partially about both the handle and the control.

33. (Original) The method of Claim 32, wherein the flexible member comprises a sheet of at least one material.

34. (Original) The method of Claim 32, wherein the flexible member has a first side and a second compressible side and wherein the wrapping operation includes positioning the first side against the handle and the control.

35. (Original) The method of Claim 34, wherein the first side includes means to prevent movement of the flexible member relative to the control and the handle.

36. (Previously Presented) A method for equipping and operating a powered appliance including a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant to the handle in which movement of the working member is at least reduced, the method comprising:

providing a flexible member having a first end and a second opposite end, the flexible member being configured to deform under the normal amount of force an operator of the powered appliance could continuously apply to the flexible member during the period of time the powered appliance would normally be used during one session;

wrapping the flexible member about one of the handle and the control;

securing the first and second ends relative to one another about said one of the handle and the control; and

moving the control to the first position adjacent the flexible member such that at least a portion of the control is surrounded by the flexible member.

37. (Original) The method of Claim 36, wherein the flexible member has a compressible outer surface and wherein the operation of moving the control includes compressing the outer surface with the control such that at least a portion of the control is surrounded by the outer surface.

38. (Previously Presented) The method of Claim 37, wherein the outer surface extends at least 120 degrees about the control after the control has been moved to the first position.

39. (Previously Presented) The method of Claim 37, wherein the outer surface extends at least 180 degrees about the control after the control has been moved to the first position.

40. (Previously Presented) The method of Claim 37, wherein the outer surface extends at least 270 degrees about the control after the control has been moved to the first position.

41. (Original) The method of Claim 36, wherein the wrapping operation includes spacing the first and second ends from one another to form a gap therebetween and wherein the operation of moving the control includes positioning the other of the handle and the control within the gap.

42. (Original) The method of Claim 36, wherein the securing operation includes releasably coupling the first end to the second end.

43. (Original) The method of Claim 36, wherein the flexible member includes an inner surface and outer surface and wherein the securing operation includes adhering the inner surface to said one of the handle and the control.

44. (Original) The method of Claim 36, wherein the flexible member has an inner surface including means for preventing movement of the flexible member relative to said one of the handle and the control.

45. (Original) An accessory for use with a powered appliance having a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, the accessory comprising:

a body configured to be coupled to one of the handle and the control, the body being configured to at least partially receive the other of the handle and the control when in the first position, wherein the body has a compressible outer surface and a high friction inner surface configured to prevent movement of the body relative to said one of the handle and the control when the body is coupled to said one of the handle and the control.

46. (Previously Presented) An accessory for use with a powered appliance having a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, the accessory comprising:

a body configured to be coupled to one of the handle and the control, the body being configured to at least partially receive the other of the handle and the control when in the first position, wherein the body has a first end and a second opposite end and wherein the body is dimensioned such that the first and second ends are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle and the control, wherein the body and the gap are sized so that at least half of the other of the handle and the control is received within the gap when the control is in the first position.

47. (Original) An accessory for use with a powered appliance having a working member, a handle coupled to the working member, and a control movable between a first position proximate the handle in which movement of the working member is permitted and a second position distant the handle in which movement of the working member is at least reduced, the accessory comprising:

a body configured to be coupled to one of the handle and the control, the body being configured to at least partially receive the other of the handle and the control when in the first position, wherein the body includes a first end and a second opposite end and wherein the accessory further includes means for securing the first and second ends relative to one another about said one of the handle and the control in at least one direction.

48. (Original) The accessory of Claim 47, wherein the means for securing includes a first extension extending from the first end and a second extension extending from the second end and wherein the first extension and the second extension are configured to be directly coupled to one another.

49. (Previously Presented) The appliance of Claim 1, wherein the flexible material is releasably coupled to the at least one of the handle and the control.

50. (Previously Presented) The appliance of Claim 49, wherein the flexible material has a first end and a second opposite end and wherein the flexible material is dimensioned such that the first and second ends are sufficiently spaced from one another to form a gap therebetween, the gap between the first end and the second end being less than the diameter of the at least one of the handle and the control.

51. (Previously Presented) The accessory of Claim 17, wherein the body has a first end and a second opposite end and wherein the body is dimensioned such that the first and second ends are sufficiently spaced from one another to form a gap therebetween when the body is coupled to said one of the handle and the control, the gap between the first and the second ends being less than the diameter of said one of the handle and the control.